

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
THE CITY OF OMAHA,
Respondent,

Case No. 2710
AMENDED COMPLIANCE ORDER

On May 8, 2012, the City of Omaha, the Respondent herein, submitted to the Nebraska Department of Environmental Quality (NDEQ), the Complainant, the City's request for a three year extension to the final implementation date of the CSO Long Term Control Plan (LTCP) from October 1, 2024, to October, 2027. The City claimed Force Majeure under paragraph 15 of the August 8, 2007, Complaint, and Compliance Order by Consent, as the grounds for the extension. The force majeure event in this instance was the 2011 Missouri River Flood.

The NDEQ finds that the flood of 2011 was a force majeure event. It was a flood of exceptional magnitude. It overwhelmed flood precautions taken by diligent and responsible government authorities for hundreds of miles along the Missouri River, including the boundary between Nebraska and Iowa. The City notified NDEQ in writing of its intent to invoke force majeure on June 3, 2011. The City's efforts at design and construction were impeded by the flood.

IT IS THEREFORE ORDERED that paragraphs 27 and 28 of the August 8, 2007, Order are amended as follows:

A. The last sentence of paragraph 27 shall provide: The schedule shall provide for implementation of the LTCP except post-construction monitoring as soon as practicable and in any event by October 1, 2027.


B. Paragraph 28 shall provide: Therefore it is ordered and agreed that, upon approval of the LTCP and schedule by NDEQ, the City shall implement the LTCP according to the schedule on or before October 1, 2027.

IT IS FURTHER ORDERED that the LTCP of 2009 shall be revised and submitted to NDEQ on or before October 1, 2014; the amended LTCP shall address all force majeure related delays. The revision shall be subject to, and contingent upon, approval by NDEQ. Upon approval by NDEQ the LTCP shall be performed by the City according to its terms and schedule.

IT IS FURTHER ORDERED that the remainder of the Order of August 8, 2007, is ratified and confirmed, and the City shall comply with the terms of the Order as amended herein.

IT IS SO ORDERED:

May 30 2012
Date

By: 
Michael J. Linder, Director, Nebraska
Department of Environmental Quality

AFFIDAVIT

STATE OF NEBRASKA | SS
COUNTY OF LANCASTER |


The undersigned oath deposes and says that on the 31st day of May, 2012, he caused an exact copy of the attached Amended Compliance Order, to be served by mailing the same in the regular United States Mail, first class, postage prepaid, certified with return receipt requested, addressed as follows:

Jim Suttle, Mayor
City of Omaha
1819 Farnam Street, Suite 300
Omaha, Nebraska 68183

and by United States mail, first class, postage prepaid on the following:

Paul Kratz
City Attorney
1819 Farnam Street, Suite 804
Omaha, Nebraska 68183

Marty Grate
City of Omaha
5600 South 10th Street
Omaha, Nebraska 68107


Timothy J. Doyle, affiant

Subscribed and sworn to before me, a Notary Public, on the 31st day of May,
2012.




Notary Public